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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-120

DOUGHERTY COUNTY, GEORGIA BOARD OF EDUCATION, R. H. WARREN, Chairman, Dougherty County Board of Education; FRANKLIN U. CROSS, J. P. CHEEVERS, HARVEY COHEN, MORGAN MURPHY, CHUCK NESBITT, FELIX MARBRY, JR., Members, Dougherty County Board of Education; PAUL ROBERTSON, Superintendent, Dougherty County School System, Individually and in their official capacities, *Appellants*

v.

JOHN E. WHITE, *Appellee*

Appeal From a Three-Judge Court in the United States District Court for the Middle District of Georgia, Albany Division

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BRIEF OF THE DOUGHERTY COUNTY, GEORGIA BOARD OF EDUCATION, ET AL.

JESSE W. WALTERS
PERRY, WALTERS, LIPPITT & CUSTER
409 North Jackson Street
Post Office Box 527
Albany, Georgia 31702

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OPINIONS BELOW

The three-judge district court's opinion of the 27th day of April, 1977 (J. S. App, pp. 1a-8a) is reported at 431 F. Supp. 919.

JURISDICTION

The order of the three-judge district court granting John E. White's application for an injunction under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c was entered on April 27, 1977 and filed on April 28, 1977 (J. S. App., pp. 9a-10a).

The Dougherty County Board of Education filed a timely notice of appeal on May 27, 1977 (J.S. App., pp. 9a-10a), and this Court noted probable jurisdiction on March 20, 1978. The jurisdiction of this Court derives from 42 USC § 1973c and 28 USC § 1253.

STATUTES INVOLVED

Sections 4(a), 4(b), 5, and 14(c)(2) of the Voting Rights Act of 1965, as amended, 42 USC 1973b(a), 1973b(b), 1973c and 1973 l(c)(2), provide as follows:

42 USC § 1973b.

"(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the

purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title. PROVIDED, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: PROVIDED, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that de-

nials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, he shall consent to the entry of such judgment.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsec. (f)(2) of this section, he shall consent to the entry of such judgment."

42 USC § 1973b.

"(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census detremines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register."

42 USC § 1973c.

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or

color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: PROVIDED, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court."

42 USC § 1973 l(c)(2)

"(2) The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting."

QUESTIONS PRESENTED

1. Whether the Dougherty County, Georgia Board of Education is a covered political subdivision under the terms of section 5 of the Voting Rights Act of 1965, as amended, 42 USC § 1973c.

2. Whether Section 5 of the Voting Rights Act of 1965, as amended, 42 USC § 1973c applied to a rule promulgated by the Dougherty County, Georgia Board of Education which provides that any employee who becomes a candidate for elective political office must take certain prescribed leaves of absence without pay.

STATEMENT OF THE CASE

On June 11, 1976 John E. White, a black employee of the Dougherty County, Georgia Board of Education, instituted an action against the Dougherty County, Georgia Board of Education, et al., alleging that he was an adult black citizen of the United States and an employee of the Dougherty County, Georgia Board of Education and had been since 1966; that he was employed on a 12-month basis, and in 1972 announced his candidacy for election to the Georgia House of Representatives; that the Dougherty County, Georgia Board of Education adopted Rule 58 which provides as follows:

"POLITICAL OFFICE. Any employee of the school system who becames a candidate for any elective political office, will be required to take a leave of absence, without pay, such leave becoming effective upon the qualifying for such elective office and continuing for the duration of such political activity, and during the period of service in such office, if elected thereto."

John E. White further alleged that he qualified for such office in June, 1972, was required to take a leave of absence from his employment, without pay, upon such qualified, that he was unsuccessful in the Democratic Primary Election held in August 1972, and returned to his employment in September, 1972.

He further alleged that he again qualified to run in June, 1974 for election to the Georgia House of Representatives and was granted a leave of absence from his employment, without pay, effective June 12, 1974, that he was successful in the Democratic Primary Election in August, 1974, and was elected to the Georgia House of Representatives on November 5, 1974, and was reinstated to his employment on November 18, 1974.

He further alleged that on June 8, 1976 he again qualified to run for election to the Georgia House of Representatives and was again required to take a leave of absence, without pay, effective June 8, 1976.

He contended that Rule 58 was in violation of the Voting Rights Act of 1965, 42 USC § 1973c and, therefore, Rule 58 was unenforceable and its application to the plaintiff was unlawful.

John E. White prayed for the convening of a Three-Judge District Court and a preliminary and permanent injunction enjoining the Dougherty County,

Georgia Board of Education from enforcing or implementing Rule 58.

The Dougherty County, Georgia Board of Education, et al. answered and denied that Rule 58 was subject to the requirements of the Voting Rights Act of 1965, 42 USC § 1973c.

Interrogatories revealed that no employee of the Dougherty County, Georia Board of Education (other than John E. White) had ever run for public office while an employee of the Dougherty County Board of Education.

Rule 58 was adopted by the Dougherty County Board of Education because it was deemed necessary to have a rule which would set forth the policy of the Board pertaining to personnel within the school system offering for elective office and serving in an elective office if elected thereto.

It was stipulated that the Dougherty County Board of Education is the body empowered by the Constitution of the State of Georgia with the responsibility for administering the Dougherty County, Georgia public school system; that John E. White is a Black citizen of the United States residing in Albany, Georgia; that John E. White had been employed by the Dougherty County Board of Education as an Assistant Coordinator of Student Personnel Services since November, 1966; that Rule 58 was adopted on June 12, 1972; that John E. White, pursuant to Rule 58, had to take leaves of absence without pay during the periods of his candidacy for the office of representative in the Georgia

House of Representatives in 1972, 1974 and 1976; and that Rule 58 was not submitted for approval pursuant to the Voting Rights Act of 1965.

Motions for partial summary judement were filed by both parties and on the 27th day of April, 1977 the three-judge district court held that Rule 58 was subject to Section Five and its enforcement was enjoined.

SUMMARY OF ARGUMENT

The Dougherty County, Georgia Board of Education has no power or control over the electoral process and, therefore, is not a political subdivision covered by § 5 of the Voting Rights Act of 1965, as amended.

A rule adopted by the Dougherty County, Georgia Board of Education that provides that if one of its employees becomes a candidate for elective public office, such employee must take a leave of absence, without pay, during the time of campaigning, is not a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Therefore, such rule does not fall within the purview of § 5 of the Voting Rights Act of 1965, as amended, and needs no preclearance as provided in § 5 before being put into effect.

ARGUMENT

A.

The Dougherty County, Georgia Board of Education Is Not A Political Subdivision As To Come Within The Ambit Of The Voting Rights Act of 1965, 42 USC §§ 1973-1973p.

In 1965 Congress enacted the Voting Rights Act of 1965 seeking to eliminate what it considered to be racial discrimination in voting. This legislation was directed principally toward Southern states, Georgia being one of such states.

Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, is as follows:

> "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by and State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title."

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c is as follows:

> "Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard. practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title

> are in effect, shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's

failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to examine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Section 14(c)(2) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 l(c)(2) is as follows:

> "(2) The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting."

Section 4(b) of the Act, 42 U.S.C. § 1973b(b) sets forth the means and methods of determining whether or not a State comes within the provisions of the Act. Georgia came within such provisions,[1] and it is thus necessary to determine whether the Dougherty County, Georgia Board of Education is a political subdivision that comes within the provisions of the Act.

The Board of Education is a political subdivision charged with the responsibility of operating the public

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[1] 30 Fed. Reg. 9897, August 7, 1965.

schools of Dougherty County, Georgia. It has no direct or indirect functions in connection with registering voters; it has no direct or indirect functions in establishing qualifications of candidates for elective office; it has no direct or indirect functions in connection with the location of polling places; it has no direct or indirect functions in connection with the changing in any manner of election laws; it has no direct or indirect functions in connection with whether or not a candidate shall be elected by a majority or plurality vote. In short and to the point, the Board of Education has no direct or indirect functions in connection with election of public officers. How then can it be said that the Board of Education is a covered political subdivision?

It should suffice to point out that the Board of Education does not meet the definition of "political subdivision" as set forth in Section 14(c)(2) of the Voting Rights Act. However, this Court has held that the answer is not so simple. The case of *United States* v. *Board of Commissioners of Sheffield, Alabama, et al.*, ——US ——, 55 L Ed 2d 148, 98 S Ct —— (March 6, 1978), was one wherein the City of Sheffield, Alabama, acting by and through its Commissioners, attempted to change its form of government from a commission form to a mayor-council form. All prepared changes were submitted to the Attorney General for preclearance as provided in the Voting Rights Act. The Attorney General objected to the implementation of a proposed at-large method of electing city councilmen.

Notwithstanding the Attorney General's objection, the City scheduled an at-large election. The United States instituted suit and a three-judge court unanimously held that Sheffield was not a "political subdivision" as that term is defined in § 14(c)(2) of the

Voting Rights Act, and that therefore, Section 5 of the Act did not apply to SHEFFIELD.[3]

This Court in a split decision reversed the three-judge district court with the majority holding that Section 5 of the Act did apply to Sheffield. The legislative history and intent of Congress were thoroughly discussed in both the majority and dissenting opinions. We have read and re-read that decision and we do not find anything therein that leads to the conclusion that it contains any authority that Section 5 of the Act applies to the Dougherty County, Georgia Board of Education.

The majority in SHEFFIELD stated on page 158,

> "The language, structure, history and purposes of the Act persuade us that § 5 like the constitutional provisions it is designed to implement, *applies to all entities having power over any aspect of the electoral process within designated jurisdictions,* not only to counties or to whatever units of state government perform the function of registering voters." (emphasis supplied)

The Dougherty County, Georia Board of Education has no power over the electoral process.

Again the majority stated on page 160,

> "Since jurisdictions may be designated under § 4 by reason of the actions of election officials who do not register voters, and since § 4(a) imposes duties on all election officials whether or not they are involved in voter registration, it appears to follow necessarily that *§ 5 has to apply to all entities exercising control over the electoral processes within the covered States or subdivisions.*" (emphasis supplied)

[3] United States v. Board of Commissioners of Sheffield, Alabama, et al., 430 F.Supp. 786.

The Dougherty County Board of Education does not exercise any control over the electoral process.

No case has been found which can be remotely considered as substantiating the decision of the three-judge district court. *Allen* v. *Board of Elections,* 393 US 544, 22 L Ed 2d 1, 89 S Ct. 817 (1969) does not support the proposition that a political subdivision that exercises no control over the electoral process is covered under Section 5 of the Act, but rather ALLEN substantiates this Court's holding in SHEFFIELD, supra, that an entity must exercise control over electoral processes to be a covered "political subdivision." ALLEN actually involved four cases which were consolidated in this Court; these cases being *Allen, et al.* v. *State Board of Elections, et al.; Fairley, et al.* v. *Patterson, et al.; Bunton, et al.* v. *Patterson, et al.;* and *Whitley, et al.* v. *Williams, et al.* In FAIRLEY, the Missippi Code was amended to provide that the Board of Supervisors of each county could adopt an order providing that board members be elected at large by all qualified electors of the county. Prior thereto all counties were divided into five districts, with each district electing one member of the board of supervisors. Clearly, this legislative amendment involved an exercise of control over the electoral process. BUNTON was an amendment to the Mississippi Code providing that in eleven (11) specified counties, the County Superintendent of Education should be appointed by the Board of Education. Prior to the amendment the eleven counties had the option of electing or appointing the superintendent. Again, this legislative change involved an exercise of control over the electoral process of eleven counties in Mississippi. WHITLEY also involved an amendment to the Mississippi Code, which amendment

changed the requirement for independent candidates running in general elections. This change also involved an exercise of control over the electoral process of the State of Mississippi. ALLEN concerned a bulletin issued by the Virginia Board of Elections to all election judges attempting to modify the provisions of the Code of Virginia. No one will seriously dispute that the Virginia Board of Elections does exercise some control over electoral process within the State of Virginia.

The case of *Georgia* v. *United States,* 411 US 526, 36 L Ed 2d 472, 93 S Ct. 1702 (1973) involved the reapportionment of the Georgia House of Representatives by the Georgia Legislature. This was a law that clearly affected voting and did involve control over the electoral process of the State of Georgia.

There are cases which hold that Section Five's preclearance requirement applies to changes in the law or procedure affecting the location of polling places, *Perkins* v. *Matthews,* 400 US 379, 27 L Ed 2d 476, 91 S Ct 431 (1971); *Annexations, City of Richmond* v. *United States,* 422 US 358, 45 L Ed 2d 245, 95 S Ct. 2296 (1975); changing of the date by which a declaration of candidacy must be filed, *Hadnott* v. *Amos,* 394 US 358, 22 L Ed 2d 336, 89 S Ct 1101 (1969); enlargement of the distance from the polling places within which campaigning is allowed, *Clayton* v. *North Carolina State Board of Elections,* 319 F Supp 915 (Ed NC 1970). However, all of these involve a political subdivision that exercised control over the electoral processes.

Mr. Justice Powell stated on page 172 in the case of *United States* v. *Board of Commissioners of Sheffield, Alabama,* supra,

> "I agree with the court that a more sensible construction of § 5, in view of and in accord with the statute's purpose, is to treat the *governmental units responsible for changes in the electoral process* within a designated State or political subdivision as the equivalent of the State or political subdivision . . ." (emphasis supplied)

It is clear that the Dougherty County, Georgia Board of Education, while a governmental unit, is not responsible for and does not cause, directly or indirectly, any changes in the electoral process within the State of Georiga, and, therefore, is not the equivalent of the State of Georgia. Therefore, Section 5 of the Voting Rights Act of 1965, as amended, does not apply to the Dougherty County, Georgia Board of Education.

B.

Section 5 Of The Voting Rights Act Of 1965, As Amended, Does Not Apply To A Rule Adopted By A Board Of Education Providing That An Employee Becoming A Candidate For Elective Political Office Must Take Prescribed Leaves Of Absence Without Pay.

Should the Court conclude that the Dougherty County, Georgia Board of Education is such a political subdivision as to be governed by Section 5 of the Act, then it must resolve the question of whether or not Rule 58 of the Board of Education is covered by Section 5 of the Act.

The key to § 5 is the words "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting", and in order for Rule

58 to come within the provisions of § 5 it must come within the meaning of such words. Rule 58 is as follows:

> "POLITICAL OFFICE. Any employee of the school system who becomes a candidate for any elective political office, will be required to take a leave of absense, without pay, such leave becoming effective upon the qualifying for such elective office and continuing for the duration of such political activity, and during the period of service in such office, if elected thereto."

The Dougherty County, Georgia Board of Education could not, if it wanted to, enact or administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964. It does not involve a voting qualification or prerequisite to vote, nor does it establish a standard, practice or procedure with respect to voting. It simply provides that any employee of the Dougherty County School System would be required to take a leave of absence, without pay, during the time he or she is actually engaged in political activity.

Congress did not intend for political subdivisions that had no control over any facet of elections to have to clear every internal matter through the Attorney General or through the United States District Court for the District of Columbia. The decision of the District Court would require such action on the part of all political subdivisions that adopt reasonable rules governing the conduct of its employees as pertains to political activity. Rule 58 was a means of getting a full days work for a full days pay—nothing more and nothing less.

CONCLUSION

The Dougherty County, Georgia Board of Education is not a political subdivision that is covered by Section 5 of the Voting Rights Act. Rule 58 of the Dougherty County, Georgia Board of Education is an effort to resolve an internal matter of the Board. It does not establish a voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting and, therefore, is not subject to the preclearance provisions of Section 5.

The decision of the lower court should be reversed.

Respectfully submitted,

PERRY, WALTERS, LIPPITT & CUSTER

JESSE W. WALTERS
Attorneys for Appellants